

# Department of Treasury Position Memo

To: Treasurer Nick Khouri  
From: Osborne, Ken (TREASURY)  
CC: Greg Gursky, Howard Ryan  
Date: March 19, 2018  
Re: Senate Bills 906 and 907 Sales and Use Tax on School Transportation Equipment

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## Treasury Position: No Position

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**Short Summary:** The proposal would exempt school buses purchased or leased by a private company from sales and use tax in situations where the private company provides both the bus and the driver to the district as a transportation service.

### Discussion of Key Principles:

**Efficiency:** The proposal does not substantially alter the administration of the tax or exemption, simply revises when a company may claim it. However, it may result in some added complexity in audit processes to track the nature of contracts and use of buses etc.

**Fairness:** The proposal does create potential fairness concerns. Ultimately companies operating in this space are running a for profit business. It is important to note that if a company simply provides the bus, but does not provide a driver, the purchase or lease of that bus would be tax exempt. They are providing services to otherwise tax-exempt entities, but are doing so as part of their business model. However, there are many of examples in which a company currently pays tax on materials used in the provision of a service (e.g. contractors doing school construction) for a school district, as well as other government entities such as cities, townships, counties, public universities, and the State itself.

**Simplicity:** The bill does not add any additional complexity to the code.

**Diversification (Tax Base):** The bill would reduce the sales/ use tax base slightly. However, as discussed above it would also begin to erode the distinction between activities performed entirely by a tax-exempt entity like a school, versus activities performed on behalf of a tax-exempt entity, by a for profit company.

### Arguments in Favor:

- Much of the cost of tax paid on buses purchased by the company would be passed on to school districts, increasing costs for local districts that are seeking savings.
- As noted above, if a similar company provides the bus on a lease to a district but does not include the driver, the bus would be tax exempt. The inclusion of the driver as an operator on the bus should not trigger the tax in this area.

### Arguments in Opposition:

- The proposal breaks with precedent regarding tax on materials provided to schools in conjunction with a service provided to a tax-exempt entity, which could have ramifications in other areas.
- While these companies are providing services to school districts, they are doing so as for-profit entities. Taxing their operations is consistent with the treatment of such activities.
- The proposal would result in a loss of approximately \$3 million to the school aid fund. As noted above some of this can be negated by reducing associated costs, but some would simply be absorbed by the company.

**Conclusion:** At this time, Department of Treasury takes no position on these bills. Ultimately, this construct does break with traditional goal of the Sales/Use Tax to tax tangible personal property at the point it is consumed in the business enterprise for a non-exempt entity. This is a concern. However, given the reality that much of the economic impact of the tax would likely be passed on to school districts, and that it's possible companies could structure contracts to avoid the tax, the Department does not object to breaking with this precedent.